IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2007

Coram

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MR. JUSTICE K.MOHAN RAM

HABEAS CORPUS PETITION No.1147 of 2006

Nirmala Rosalin .... Petitioner

-Vs.-

1. The Secretary to the Government
Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police
Greater Chennai. .... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the Second Respondent, dated 19.09.2006, in Memo No.255/BDFGISV/2006 against the petitioner's Husband Pawl @ PaulRaj, son of AnthonySamy, aged about 33 years, who is confined at Central Prison, Chennai and set-aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr. V.Parthiban
For Respondents: Mr. M.Babu Muthu Meeran, A.P.P.,

O R D E R

(Order of the Court was made by K.Mohan Ram, J.)

Heard Mr. V.Parthiban learned counsel appearing for the petitioner and Mr. M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents. The detenu was detained by an order dated 19.09.2006 on the allegation that he is a goonda. This Habeas Corpus Petition has been filed by the wife of the detenu challenging the order of preventive detention.

2. The learned counsel for the petitioner raised the following contentions:-

(i) In the grounds of detention, the Detaining Authority has stated as follows:-

> "The Inspector of Police during the course of investigation produced Thiru Pawl @ Paulraj before the IX Metropolitan Magistrate Court, Saidapet, Chennai and lodged him at Central Prison, Chennai as a remand prisoner till 28.8.2006. His remand was further extended till 11.9.2006"

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and submitted that the order of detention came to be passed on 19.09.2006 and the IX Metropolitan Magistrate, Saidapet, by his order dated 11.09.2006 had extended the remand of the detenu till 25.09.2006 in respect of the very same J-6 Thiruvanmiyur Police Station, Crime No.729 of 2006, this according to the learned counsel amounts to non-application of mind on the part of the Detaining Authority.

(ii) The learned counsel submitted that the Detaining Authority in the grounds of detention has stated that the detenu moved another bail application in respect of J-6 Thiruvanmiyur Police Station Cr. No.729 of 2006 before the High Court, Chennai in Crl.O.P.No.24156 of 2006 and the same is pending, overlooking the fact that the Sponsoring Authority in his Special Report, dated 18.09.2006 which is available at page 152 of the paper book, at page 153 has clearly stated that Crl.O.P.No.24156 of 2006 filed by the detenu came to be dismissed by the High Court on 12.09.2006 and therefore according to the learned counsel it amounts to total non-application of mind on the part of the Detaining Authority which vitiates the order of detention.

3. We have perused the grounds of detention which reveals that though the remand of the detenu had been extended by the IX Metropolitan Magistrate, Saidapet, Chennai on 11.09.2006 itself in J-6 Thiruvanmiyur Police Station, Cr. No.729 of 2006 till 25.09.2006 and the order of detention was passed on 19.09.2006, the Detaining Authority has failed to apply his mind to the above said extension of remand of the detenu. This shows that the Detaining Authority was not aware of the order of extension of remand itself.

4. In paragraph 4 of the grounds of detention the Detaining Authority has stated as follows,

> "4. I am aware that Thiru Pawl @ Paulraj is in remand in J6 Thiruvanmiyur Police Station Crime Nos.729/2006, 202/2006, 261/2006, 268/2006 and 724/2006 and he has moved a bail applications for all the cases before the Principal Sessions Court, Chennai in Crl.M.P.nos.7257/2006, 7258/2006, 7259/2006, 7260/2006, 7261/2006 respectively and the same were dismissed. He moved another bail application for the case in J6 Thiruvanmiyur P.S. Cr.No.729/2006 before the Hon'ble High Court, Chennai in Crl.O.P.No.24156/2006 and the same is pending. I am also aware that it is most likely that he may come out on bail since in similar cases bails are granted by the Hon 'ble High Court".

whereas the Special Report dated 18.09.2006 of the Sponsoring Authority which is available at page 152 of the paper book reveals that Crl.O.P.No.24156 of 2006 filed by the detenu for bail was dismissed by the High Court even on 12.09.2006 itself. Therefore, the Detaining Authority has not applied his mind to the Special Report of the Sponsoring Authority. Had the Detaining Authority applied his mind and considered the Special Report of the Sponsoring Authority he would have come to know about the dismissal of the Bail Petition filed in Crl.O.P.No.24156 of 2006 and he would not have stated in the grounds of detention that Crl.O.P.No.24156 of 2006 was pending on the date of passing of the Detention Order and he would not have further observed as follows:-

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" I am also aware that it is most likely that he may come out on bail since in similar cases bails are granted by the Hon 'ble High Court"

5. In our considered view, the above said non-application of mind on the part of the Detaining Authority on vital aspects has seriously affected the valuable right of the detenu. Had the Detaining Authority applied his mind to the above said aspects, he might not have passed the order of detention and therefore the order of detention is vitiated and hence the same could not be sustained. In that view of the matter, we are constrained to quash the order of detention though the detenu is involved in several cases.

6. For the above said reasons, the Habeas Corpus Petition is allowed and the order of detention is set-aside and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

srk

To
1. The Secretary to the Government
Prohibition and Excise Dept.,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police
Greater Chennai, Chennai.

3. The Superintendent of Police,
Central Prison, Chennai.

4. The Joint Secretary to Govt.
Public [Law and order],
Fort St. George, Chenai 9.

5. The Public Prosecutor
Madras High Court, Chennai.

+ 1 CC To Mr. V.Parthiban, Advocate SR NO. 6079

H.C.P. No.1147 of 2006

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